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THE HINDU MARRIAGES VALIDITY ACT, 1949

The Hindu Marriages Validity Act is a momentous piece of legislation. It cuts deeply into principles of Hindu law which have stood the test of centuries. Its consequences are likely to be far-reaching in view of its seemingly retrospective character. The most important of the changes ushered in by the Act is that difference in caste is no longer relevant on the question of the validity of marriages contracted between Hindus.

Whatever the position might have been during the vedic period, it was fairly clear that in later times a distinction had been maintained between marriages within one's own caste and marriages outside. The latter were further distinguished into anuloma and pratiloma unions. The prohibition of mixed marriages might no doubt be comparatively modern but it was in fact in force from several centuries ago.[1] Though they were not approved, anuloma marriages were generally recognised by the Sastras. In the case of pratiloma alliances, none except Baudhayana was prepared to recognise them. Judicial decisions have uniformly held pratiloma alliances to be outright void all over India—see *Lakshmi* v. *Kaliyan Singh*[2], *Bai Kashi* v. *Jamnadas*[3], *Appibai* v *Khimji*[4], *Sespuri* v *Dwaraka Prasad*[5], *Munni Lal* v. *Shiama*[6]. As regards anuloma marriages, the Allahabad and Madras High Courts definitely held them to be void—*Padam Kumari* v *Suraj Kumari*[7], *Jwala Singh* v. *Sardar*[8], *Subbaramayya* v *Venkatasubbamma*[9]. Cf, *Nalinaksha* v *Rajani Kanta*[10]. The Bombay High Court had on the other hand upheld the validity of such marriages, *Bai Gulab* v. *Jiwanlal*[11], *Natha Nathuram* v *Mehta Chotalal*[12]. In *Bai Gulab's case*[11], Shah, J., observed

> "According to Hindu law as administered in the Bombay Presidency, an anuloma marriage is not prohibited, because such marriages are obsolete they are not illegal or prohibited by law."

In the result, the status of wifehood for the woman and legitimacy for the offspring of the union would not arise where the alliance was in the pratiloma form in any province whatsoever or even in the case of anuloma unions outside the province of Bombay, with consequent repercussions on rights of inheritance, maintenance, etc. The Act of 1949 sweeps aside all these distinctions in the matter of marriages among Hindus and declares that a marriage between Hindus which is otherwise valid shall not be deemed invalid merely by reason of the parties thereto belonging to different castes. Anuloma as well as pratiloma alliances are hereafter perfectly valid. Where the parties are Hindus, Sikhs or Jains they can intermarry without recourse to the Special Marriage Act, 1872.

A number of points fall to be considered in ragard to the Act. In section 2, it is stated that the term "Hindu" includes persons professing the Sikh or Jaina religion. Buddhists are left out. Is it a *casus omissus* or deliberate? While section 4 of the Indian Succession Act as well as section 2 of the Special Marriage Act would distinguish the Hindu from a Sikh, Jain and Buddhist, the Madras Hindu Bigamy Prevention and Divorce Act, 1949, defines a Hindu as inclusive of a person professing the Buddhist, Jaina or Sikh religion. The last Act in fact goes further and prescribes (*see* section 2) that it shall be presumed until the contrary is proved, that a person who is not a Muslim, Christian, Parsi or Jew by religion is a Hindu. Thus under the Madras Act a Buddhist is a Hindu, while under the Central Acts he is seemingly not. Is it not desirable that, at any rate, in matters concerning

1. Mayne, Hindu Law & Usage (10th Edn.), pp 175-179
2. (1900) 2 Bom L R 128
3. (1912) 14 Bom L R 547
4. (1938) I L R 60 Bom 455.
5. (1912) 10 All L J 151
6. (1926) I L R. 48 All 670
7. (1906) I L R 28 All 458
8. (1919) I L R 41 All 629
9. (1941) 1 M L J 724 I L R. (1941) Mad 989
10. (1931) I L R. 58 Cal 1392, 1399.
11. (1922) I.L R 46 Bom 871.
12. (1931) I.L R 55 Bom. 1.

status there should be uniformity as to who is a Hindu? As it is, it would be a matter for doubt whether a marriage between a Hindu and a Buddhist could be regarded as a valid marriage where it is celebrated outside the Special Marriage Act.

The language of section 3 of the Act is not happy and looks somewhat inelegant. It provides *inter alia* that no marriage between Hindus shall be invalid by reason only of the fact that the parties thereto belonged to "different religions". The latter words obviously refer to Hinduism, Sikh or Jaina religions, but in view of the definition of a Hindu in section 2, it is somewhat clumsy to refer to a marriage between Hindus as being at the same time one between parties belonging to two different religions.

A matter of considerable importance is the retrospective character of the Act. Section 3 states that

> "notwithstanding anything contained in any other law for the time being in force or in any text, rule or interpretation of Hindu law or in any custom or usage no marriage between Hindus shall be deemed to be invalid or, *even to have been invalid* by reason only of the fact that the parties thereto belonged to different religions, castes, sub-castes or sects" (italics ours).

The italicised portion could only refer to marriages celebrated prior to the passing of the Act. Otherwise those words would be superfluous. But for those words, to give an operation to the Act to a period earlier than 15th April, 1949, would be impermissible. Now to construe the Act as having retrospective effect would be to re-assess status and in the light of that re-assessment to unsettle what had been regarded as settled things in the domain of property law. It would raise grave problems in regard to inheritance or devolution in any other way which had happened prior to the Act. In the law of adoption, the Privy Council has ruled that where an adoption is valid it cannot be denied effect, *Anant* v. *Shankar*[1]; that the adopted son can recall property which prior to his adoption had passed to another member of the family by inheritance or survivorship, *Amarendra* v. *Sanatan Singh*[2], that he can re-open a partition among the surviving members of his father's family prior to his adoption, *Sankaralingam* v. *Veluchami*[3], but that if prior to his adoption the family properties had passed into the hands of strangers, *bona fide* purchasers for value from the intermediate owners, totally different considerations might arise, *Pratapsingh* v. *Agarsinghji*[4]. Presumably the sons of mixed marriages who had in the past been regarded as having neither the status nor the rights of legitimate sons would on the analogy afforded by the case of the adopted son be entitled to similar treatment.

Another equally serious question would be as to the rights of the offspring of mixed unions *vis a vis* any son of the father by a wife of equal caste. The Sastras have provided for the rights of anulomajas only and that too in a general sense merely. The rights are not to be the same as those of a son born of a wife of equal class. The sons of a Brahmin, for instance, born of his Brahmin, Kshatriya, Vaisya and Sudra wives will share in the proportion of 4: 3: 2: 1. In *Natha Nathuram* v. *Mehta Chotalal*[5], the son of a Brahmin by a Sudra wife was held competent to take 1/10 of the inheritance only even though in that case there was no son of a wife of any other caste. It is regrettable that the Act has not provided for these matters and has left elucidation to the Courts. It may, having regard to the policy of the Act, namely, social equalisation, be argued that consistently with that, there could be no disparity in law between the sons born of the wives of different castes and that all of them should have strictly equal rights. Such an argument would be of doubtful appeal having regard to the rulings of courts in the past. To leave the matter there would be productive of further complications as for instance where the offspring of inter-caste marriages in their turn marry in the same way. The analogy afforded by the texts of Hindu law may not provide any clue beyond a point. It is therefore up to the Legislature to consider these matters comprehensively and provide for the rights to property and other rights such as maintenance to the wives and children of inter-caste marriages. To leave things as they are might cause inextricable confusion in the domain of property law in particular.

S. VENKATARAMAN.

1. (1943) 2 M.L.J. 599: L.R. 70 I.A. 232.
2. (1933) 65 M.L.J. 203: L.R. 60 I.A. 242.
3. (1942) 2 M.L.J. 678 (F.B.).
4. (1918) 36 M.L.J. 511: L.R. 46 I.A. 97.
5. (1931) I.L.R. 55 Bom. 1.

SUMMARY OF ENGLISH CASES

Re Gibson, (1949) 2 All.E R 90 (P D A)

Will—Codicil—Blind person—If can attest—Wills Act (1837), *section* 9

A blind person cannot witness a will or codicil A mere presence, without the faculty of sight is not enough to constitute a person a "witness" for the purposes of section 9 of the Wills Act (1837) For the purposes of the Act a "witness" means one who, in regard to things audible has the faculty of hearing and in regard to things visible has the faculty of seeing The signing of the will is a visible matter and therefore a will is not "signed" in the presence of a blind person nor is he a witness for the purposes of the section

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Mason *v* Burmingham, (1949) 2 All E R 134 (C A)

Sale of Goods Act (1893), *section* 53 (2)—*Stolen property—Damages for breach of warranty of quiet possession—If includes costs incurred by purchaser for repairs*

A purchaser of a second hand typewriter which is found to be stolen property can recover as part of the damages for breach of warranty for quiet possession the expenses incurred by him in repairing the machine as loss directly and naturally resulting from the breach of warranty within the meaning of section 53 (2) of the Sale of Goods Act, 1893

Jennings *v.* Cole, (1949) 2 All E R. 191 (K B D.).

Tort—Neighbour entering premises at request of the occupier to tend his sick wife—Injury by slipping on a rug in the doorway—Liability for injuries

The plaintiff while entering premises occupied by the defendant at his request to tend his sick wife during his absence slipped on a rug on the doorway and was injured In a claim for damages,

Held The rug in the circumstances of the case was not an unusual danger of which the defendant knew or ought to have known or for which he was in any way to blame Accordingly the defendant was not liable though the plaintiff was an invitee

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Stowell *v* Railway Executive, (1949) 2 All E R 193 (K B D).

Tort—Person entering platform in Railway station to receive a passenger—Slipping on oily patch and falling down—Liability of Railway for injury

Where the father of a girl who is travelling goes to meet her to collect her luggage and help her out of the station, he is there as an invitee The Railway Executive have a common interest with him in his being there and in those circumstances they owe him the duty owed by an invitor to an invitee The duty is to prevent damage to the invitee from any unusual danger of which the occupier knew or ought to have known

One does not, when using a Railway platform, expect to find oily or slippery patches which cause one to fall and such patch constitutes an unusual danger to the invitee who is entitled to have damages for the injury he has sustained as a result of the invitor's breach of duty

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Jones *v.* Bellegrove Properties, Ltd , (1949) 2 All E R 198 (C A)

Limitation—Acknowledgment of debt—Balance sheet of debtor, a company, showing total debts of company—Shareholder a creditor to whom such balance sheets were given—Can prove by oral evidence that the total debts shown included the amount due to him and rely on it as acknowledgment to save limitation.

At various dates the plaintiff a shareholder lent to the defendant company certain sums of money. The company at the annual general meeting handed

over to the plaintiff who was present in his capacity as a shareholder balance sheets signed by the accountant and two directors which showed the total sum owed to creditors

Held, parol evidence can rightly be admitted to show that part of the sum was owed to the plaintiff and the issue of the balance sheet constituted in the circumstances a sufficient acknowledgment of the defendant company's indebtedness to the plaintiff and saved the claim from the bar of limitation

(1949) 1 All E R 498, affirmed.

R B POLICIES AT LLOYDS *v* BUTLER, (1949) 2 All E R 226 (K B D)

Limitation—Car stolen by unknown person—Car ultimately purchased for value by defendant—Action for recovery of car from defendant—Limitation—Starting point—Limitation Act (1939), *sections* 2 (1) *and* 3 (1)

A motor car was stolen from the plaintiff's possession by some person or persons unknown on June 27, 1940. In January 1947 the car bearing a different registration number was found in the possession of the defendant, having passed to him through a line of intermediate purchasers during the previous seven years. In an action against the defendant for the recovery of the motor car,

Held, the cause of action accrued as soon as the car was stolen though there was no known person to be proceeded against Accordingly time begins to run from that moment notwithstanding the fact that the plaintiff is ignorant of the identity of the thief

The present action brought after the expiration of six years from the accrual of the cause of action is barred by limitation

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JOHN LEE & SON *v*. RAILWAY EXECUTIVE, (1949) 2 All E R 230 (K B D).

Indemnity—Warehouse belonging to Railway adjacent to the railway let to tenant for storing goods—Indemnity by tenant for " loss which but for the tenancy would not have arisen " —Fire caused by spark from Railway engine damaging goods—Railway if can avoid liability under the indemnity.

A warehouse belonging to a railway was let out to plaintiff for storing goods The plaintiff indemnified the Railway " against all loss of or damage to property and any other loss, damage, costs and expenses however caused or incurred which but for the tenancy hereby created or anything done pursuant to the provisions hereof would not have arisen." Goods stored in the warehouse were damaged by fire caused by a spark or sparks from a shunting engine belonging to the Railway In a claim by the plaintiff, the Railway relied on the indemnity,

Held, the indemnity was limited to damages arising out of or in connection with the occupation under the tenancy and did not relieve the Railway from liability for their negligence

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VERE-WARDALE, *In re*, (1949) 2 All E.R 250 (P.D A).

Will—Probate action—Attesting witness giving adverse evidence—Further evidence to rebut evidence of the attesting witness—If admissible

The object of the Legislature in imposing the strict formalities required by the Wills Act, 1837, section 9 was the prevention of fraud Where the two attesting witnesses have said that they subscribed their names to the will before the testator appended his signature it is competent for the Court in a probate action to receive other evidence adduced by the propounders of the will to show that the attesting witnesses are in error in saying what they have said in their evidence

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